160 U.S. 389

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 128.

THE IOWA CENTRAL RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JUNE 30, 1892.

(15,067.)

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1 Be it remembered that in a certain cause pending in the supreme court of Iowa, and after the filing of certain pleadings and papers by the respective parties, and after certain rulings by the court, the record and proceedings there had *was* printed, and on the 1st day of April, 1890, the plaintiff filed in said supreme court a printed abstract, the same, together with endorsements thereon, being in the words and figures following, to wit:

"STATE OF IOWA, Plaintiff,
vs.
IOWA CENTRAL RAILWAY CO., Defendant.

Application for an order against defendant, as successor and assignee of the Central — of Iowa, to compel it to obey a decree of this court against the latter company.

John Y. Stone, attorney general, and Ed. Collin, for plaintiff; Anthony C. Daly, attorney for defendant.

Applicant's Abstract of Record.

On September 26, 1889, plaintiff filed in the supreme court the following notice:

2 In the Supreme Court of Iowa, October Term, 1889.

THE STATE OF IOWA, Plaintiff,
vs.
IOWA CENTRAL RAILWAY COMPANY, Defendant.

To said defendant:

You will take notice that on the first day of the next ensuing term of the supreme court of Iowa, to be begun and held at the capitol, in the city of Des Moines, on the first Tuesday in October, 1889, or as soon thereafter as counsel can be heard, the undersigned, in behalf of the State of Iowa, will apply to said court asking that an order be made requiring you to show cause, as the successor, assignee, and grantee of the Central Iowa Railway Company of Iowa, why you should not obey the order and decree of the court made October 27, 1887, in said court, in a case wherein The State of Iowa was plaintiff and The Central Iowa Railway Company and The Burlington, Cedar Rapids & Northern Railway Company were defendants, and why a writ of mandatory injunction should not issue, commanding you to obey said decree, and praying that an order be entered commanding you to obey the mandate contained in said decree; a copy of the petition to be thus filed and of the decree
3 herein referred to *are* hereto annexed and herewith served upon you.

JOHN Y. STONE,
Attorney General.

STATE OF IOWA, } ss:
Marshall County, }

Received this notice, with copy of petition and decree annexed, and served the same, on the 27th day of August, A. D. 1889, upon the Iowa Central Railway Company by reading the same to C. H. Ackert, general manager of said named Iowa Central Railway Company, and by delivering to him a true copy of the same in Marshall township, in Marshall county, Iowa.

J. S. NIXON,
Sheriff of Marshall County, Iowa.

Petition Attached to Notice.

In the Supreme Court of Iowa, October Term, 1889.

THE STATE OF IOWA, Plaintiff,
vs.
THE IOWA CENTRAL RAILWAY COMPANY, Defendant.

The plaintiff alleges that on October 27th, 1887, a decree was entered in this court in the case of The State of Iowa, appellee, against The Central Iowa Railway Company and The Burlington, Cedar Rapids & Northern Railway Company, appellants, a
4 copy whereof is hereunto annexed, marked 'Exhibit A,' and made a part of this petition; that since the entering of said decree the defendant herein, to wit, The Iowa Central Railway Company, has become the successor, assignee, and grantee of the Central Iowa Railway Company; that the defendant in this petition, as such successor, assignée, and grantee, has been and is now opening and running its line of railway contrary to the terms and provisions of said decree and in violation thereof; that in the operation of its said trains and in the conduct and management of its business the defendant herein utterly disregards and disobeys the mandate of the court.

The plaintiff therefore prays that the said defendant, The Iowa Central Railway Company, be required to show cause why it should not obey the mandate and order contained in said decree and why a writ of mandatory injunction should not issue against it thereon, and that upon the hearing hereof an order be made requiring the defendant to obey the command and order contained in said decree; that a writ of mandatory injunction be ordered to issue against it to enforce the order and decree of the court.

JOHN Y. STONE,
Attorney General.

5 STATE OF IOWA, } ss:
Marshall County, }

Received this notice and served the same, on the 27th day of August, A. D. 1889, upon the Iowa Central Railway Company by reading the same to C. H. Ackert, general manager of said named Iowa

Central Railway Company, and by delivering to him a true copy of the same in Marshall township, in Marshall county, Iowa.

J. S. NIXON,
Sheriff of Marshall County, Iowa.

EXHIBIT A, DECREE ATTACHED.

In the Supreme Court of Iowa, October Term, 1889.

THE STATE OF IOWA, Appellee,
vs.
THE CENTRAL IOWA RAILWAY COMPANY and The Burlington, Cedar Rapids & Northern Railway Company, Appellants.
} From the Cerro Gordo District Court.

Decree.

The judgment, order, and decree of the said district court having been confirmed by this court by written opinions and filed on or about the 15th day of March, 1887, the appellants afterwards
6 filing petition for rehearing, which has been overruled, the appellee electing to take decree of this court, and the parties stipulated to present the decree to this court at this term:

First. It is therefore ordered, adjudged, and decreed that the findings, order, and recommendation of the board of railroad commissioners, made on or about the 15th day of February, 1883, in reference to the matter herein in controversy is reasonable, just, and binding upon the parties.

Second. It is further ordered, adjudged, and decreed that the defendant The Burlington, Cedar Rapids & Northern Railway Company, its officers, agents, and servants, and its successors, assigns, grantees, and lessees, and the officers, agents, and servants of each are restrained and forever enjoined from preventing, hindering, delaying, or in any manner interfering with the Central Iowa Railway Company, its officers, agents, or servants, its successors, assigns, grantees, lessees, or either thereof, or the officers, agents, or servants of either from running any and all trains, engines, cars, both passenger and freight, on and over the track now constructed from and between the depot buildings in Northwood, Iowa, and Manly Junction, Iowa, and to enforce the foregoing paragraph of this decree and order, upon request of the plaintiff *of* its attorney, a preventing writ of injunction may be issued.

7 Third. And it is further ordered, adjudged, and decreed that the said The Central Iowa Railway Company, its officers, agents, and servants, its successors, assigns, grant-s, and lessees and each and every thereof are directed and commanded, until otherwise ordered, to forever maintain and operate that certain piece and part of railroad lying and being between the depot buildings in Northwood, Iowa, and Manly Junction, Iowa, and will run its and their trains, engines, cars, both passenger and freight, according to regular and public schedule time, on and over said part

of said railroad, giving to any and all the public desiring to travel over the same and to ship freight over the same the accommodations and facilities incident to and usual to such desired service, and will maintain and operate said part of said railroad in connection with its other road, extending south from Manly Junction, Iowa, to Albia, Iowa, and without unusual and unnecessary delays, and to enforce this the third paragraph of this decree both a preventive and mandatory writ of injunction will issue at any time on the request of the State of Iowa or its attorney.

Fourth. Any and all leases, contracts, and stipulations by and between appellants herein are hereby modified to the extent that this decree may be fully carried out and executed.

8 Fifth. It is further ordered and adjudged that appellants herein pay $250 for plaintiff's attorney for services in this court in this case, together with all other costs made and expended, and that execution issue therefor.

Approved October 27th, 1887.

In January, 1890, defendant filed the following—

Answer.

In the Supreme Court of Iowa.

STATE OF IOWA
vs.
THE IOWA CENTRAL RAILWAY COMPANY.

To the honorable the supreme court of Iowa:

The Iowa Central Railway Company, responding to the order of this court made at the October term, 1889, to wit, on the thirty-first day of October, 1889, requiring it to show cause in writing why a mandatory writ of injunction should not issue commanding it to comply with the decree of this court made on the 27th day of October, 1887, in a cause wherein The State of Iowa was plaintiff and The Central Iowa Railway Company and The Burlington, Cedar Rapids and Northern Railway Company were defendants, says:

That at the time of the rendition of said decree of October 27th, 1887, the Iowa Central Railway Company had no existence;

9 it was not organized till long subsequent thereto; it was not a party to the suit in which such decree was rendered; it had no notice whatever of said suit; it was not heard in any manner therein, has never had its day in court, and is not bound by such decree; that the Central Iowa Railway Company, which was a party to the said suit wherein said decree was rendered, was defunct and deceased at the time of the rendition thereof and for a long time prior thereto, its property, all and singular, having been taken possession of by the United States circuit court for the southern district of Iowa on the first day of December, 1886, in a cause there depending, wherein The Central Trust Company of New York was the complainant and the said Central Iowa Railway Company was

the defendant, the suit being for the foreclosure of mortgage; and its property was sold at public auction by the order of said United States court on the 17th day of September, 1887, to James Thompson, of New York, he being the highest bidder, and said sale was duly confirmed by the said United States court and a conveyance duly ordered and made of said property.

And the Iowa Central Railway Company further says it is not the successor, assignee, or grantee of the said Central Iowa Railway Company and it has never been adjudged to be the successor, assignee, or grantee of the said Central Iowa Railway Company,
10 and no judgment has ever been recovered or decree rendered against it, the Iowa Central Railway Company, by the State of Iowa or any person commanding it to perform any of the acts in the said decree required by the said Central Iowa Railway Company and the said Burlington, Cedar Rapids and Northern Railway Company.

And the Iowa Central Railway Company also says that no demand has been made upon it to perform any order or do any act which this court commanded in the said suit of The State of Iowa *vs.* The Central Iowa Railway Company and The Burlington, Cedar Rapids and Northern Railway Company.

And the Iowa Central Railway Company additionally says that a mandatory writ should not issue until a judgment is first had against it determining that it ought to of right do and perform the thing required of it. The writ should not issue until the Iowa Central Railway Company has had an opportunity of contesting in the regular manner the right of the plaintiff to require of the Iowa Central Railway Company the performance of the thing which is required of the parties to the said suit in which said decree was rendered; and said writ should not issue against the Iowa Central Railway Company by virtue of a decree rendered in a suit against the Central Iowa Railway Company, which was dead to all
11 intents and purposes long prior to the final determination of the controversy and the entering of said decree.

And the Iowa Central Railway Company further says that to oblige it to perform the order required of it by the plaintiff herein will entail upon it great loss and damage, to wit, in the sum of fourteen thousand dollars ($14,000) and more.

Wherefore the Iowa Central Railway Company asks to be discharged and for its costs.

ANTHONY C. DALY,
Attorney for Iowa Central Railway Co.

STATE OF IOWA, }
Marshall County, } *ss:*

C. H. Ackert on oath says he is the general manager of the Iowa Central Railway Company, defendant herein; he has read the foregoing answer, has full knowledge of the statements and averments and contents thereof, and the same are true as he verily believes.

C. H. ACKERT.

Sworn to before me this 17th day of December, 1889, by said C. H. Ackert and by him subscribed in my presence, at Marshalltown, in said Marshall county.

Witness my hand and seal notarial same day.

[SEAL.] R. A. DUGAN,
Notary Public in and for Marshall County, Iowa.

12 Afterwards, at the same term, plaintiff filed the following—

Motion to Strike.

Comes now plaintiff and moves the court to strike from the defendant's answer all allegations and statements concerning the cost it will be to said company to operate the line of road from Manly Junction to Northwood as being redundant and immaterial.

JOHN Y. STONE,
Attorney General.

Which motion was sustained by the court.

And afterwards, at the said January term, plaintiff filed the following—

Motion for a More Specific Statement in the Answer.

Comes now the plaintiff and moves the court to require the defendant to make a more specific statement in its answer in the following particulars:

First. Show the chain and character of title of the property in controversy from the purchaser, Thompson, to the defendant company.

Second. To show the facts upon which it bases its conclusion that the old Central of Iowa Railroad Company had passed out of existence at the date of the proceedings which furnished the basis of the decree of this court.

JOHN Y. STONE,
Attorney General.

13 Which motion was by the court sustained. Thereupon the defendant filed the following—

Amendment to Answer.

First. Comes defendant and, in accordance with the ruling of the court upon plaintiff's motion for more specific statement, amends its answer as follows: The said James Thompson assigned all his right, title, and interest so purchased at the foreclosure sale as aforesaid to the Iowa Railway Company, a corporation of Iowa, and subsequently the said Iowa Railway Company conveyed to this defendant, The Iowa Central Railway Company, a corporation of Illinois, the said railway so purchased as aforesaid by said Thompson.

And defendant insists upon and reiterates all of its allegations in

its original answer, to which this is an amendment, and in particular that this defendant is not the successor, assignee, or grantee of the Central Iowa Railway Company, and that it, defendant, has never been adjudged to be such successor, assignee, or grantee.

Second. And, further answering and as an amendment to its said answer, made by reason of the sustaining of plaintiff's motion for more specific statement, defendant says that long prior to the rendition of the decree in the case of The State *vs.* Burlington,
14 Cedar Rapids & Northern Railway Company and The Central Iowa Railway Company, and to wit, on the first — December, 1886, the Central Iowa Railway Company, by order of the circuit court of the United States for the southern district of Iowa, turned over and transferred all of its railway and property, real, personal, and mixed, to a receiver appointed by said United States court, and the said Central Iowa Railway Company never again took possession of the property, the same having thereafter been sold at foreclosure sale by order of said United States court to satisfy the mortgages thereon; and all of said proceedings in said United States court were had in the case of The Central Trust Company of New York against The Central Iowa Railway Company.

ANTHONY C. DALY,
Attorney for the Iowa Central Railway Company.

And afterwards, at the same term, defendant filed the following—

Second Amendment to Answer.

Comes defendant and, leave of court being first had, amends its answer as follows:

And defendant says that the Burlington, Cedar Rapids and Northern Railroad Company is now and for some time past has been operating the railway in question from Manly Junction to Northwood, Iowa, for which it pays to this defendant, as compensation and rental therefor, the sum of fourteen thousand dollars a year,
15 and should this court order defendant to comply with the decree in the case of State *vs.* Burlington, Cedar Rapids & Northern Railway Company and Central Iowa Railway Company this defendant would be damaged in the said sum.

IOWA CENTRAL RAILWAY COMPANY,
By ANTHONY C. DALY, *Attorney.*

And at the same time defendant filed the following—

Motion for a Jury Trial.

Comes the Iowa Central Railway Company and demands a jury trial herein.

ANTHONY C. DALY,
For IOWA CENTRAL RAILWAY COMPANY.

And thereupon, at the said January term, plaintiff filed the following—

Motion for Order and Judgment.

Comes now the plaintiff and moves the court to enter the order prayed for in the petition herein upon the ground that the defendant in its answer has not shown cause why such order should not be made, and for the further reason that upon the record and pleadings in this proceeding it appears that the plaintiff is entitled to such order.

JOHN Y. STONE,
Attorney General,
By ED. COLLIN,
Associate Counsel.

(Endorsed:) Service hereof admitted and copies received this 26th March, 1890. Anthony C. Daly, for Iowa Central Railway Company."

16 On the 8th day of April, 1890, the defendant filed an amended abstract, the same, with endorsements thereon, being in the words and figures following, to wit:

"STATE OF IOWA, Plaintiff,
vs.
THE IOWA CENTRAL RAILWAY COMPANY, Defendant.

John Y. Stone, att'y gen'l, and Ed. Collin, for plaintiff; Anthony C. Daly, for defendant.

Amendments to Record.

The record prepared by plaintiff is not correct. It omits written objections made and filed by defendant; also exceptions taken by defendant to rulings of the court, and also a petition of defendant for change of forum. It becomes necessary, therefore, to print these amendments.

At the proper time the defendant presented to the court its petition in due form for a change of forum to the Federal court, to which was attached a sufficient bond in the form required by law. Upon the plaintiff's objection, the petition was denied and the defendant at the time duly excepted to the ruling.

17 Upon the filing of plaintiff's motion for more specific statement the defendant filed its objections thereto as follows:

Comes defendant and, objecting to the motion for more specific statement, says:

1. That the provision of the code, section 2720, referring to such motions is as follows:

'Where the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent,

the court may, on motion, require it to be made more definite and certain.'

2. The allegations of the answer are not indefinite, are not uncertain, and the precise nature of the defense is clearly apparent.

3. The allegations of the answer are definite and certain, and the precise nature of the defense is clearly shown to be (*a*) that this defendant is not bound by the decree in a case where it was not a party; (*b*) that this defendant has never had its day in court; (*c*) that this defendant is not a or the successor of the Central Iowa Railway Company; (*d*) that this defendant is neither the grantee nor assignee of the Central Iowa Railway Company; (*e*) that the rendition of the decree which the plaintiff is attempting to enforce us to comply with was made at a time long prior to the organization or incorporation of this defendant; (*f*) that this defendant should not be held to be bound by any decree until it has
18 had its day in court, until it has had an opportunity to be heard; (*g*) that the Central Iowa R'y Co. had been dispossessed of its property long prior to rendition of the said decree by action in the U. S. circuit court for this district, in a foreclosure suit there depending; (*h*) that to enforce the said decree against this defendant will entail upon it a loss of more than $14,000.00.

4. All of the above allegations, certain and positive, are stated in the answer, and therefore the same is not vulnerable to the attack of the plaintiff and is not subject to the said motion.

5. The plaintiff by this motion for more specific statement is not seeking the statement of our defense with certainty and definiteness, but is endeavoring to force us by this proceeding to state other and further facts which he considers a part of his case and from which he proposes to make the deduction that this defendant is the successor of the Central Iowa Railway Co.

6. If the allegation of these matters is essential to plaintiff's case, he ought to be obliged to set them out, either by pleading or evidence.

7. The plaintiff really seeks by this motion to force us to prepare our answer according to his dictation and his thoory so he may demur thereto, while defendant urges and insists upon the right to have the case heard upon the facts, upon its merits.

8. Plaintiff has a theory, and to get it before the court his
19 way he is desirous, by an order of this court, to prepare our answer for us, while we insist we can attend to such a matter very well ourselves.

9. We are not obliged to show the chain and character of our title in our answer. The code of Iowa provides for — in but one class of cases, viz., actions to quiet title, and this case is not of that character.

10. Our answer shows facts upon which the conclusion is based that the Central Iowa R'y Co. was substantially defunct at the time of the rendition of said decree.

11. The motion for more specific statement is insufficient, for that there is no allegation therein that the allegations of the answer are so indefinite and uncertain that the precise nature of the de-

fense is not apparent, and section 2720 clearly intends that a motion for more specific statement is not allowable in the absence of such an allegation, and clearly the motion is of no moment when the answer attacked is not vulnerable to the objections of the statute, when the allegations of the answer are so definite and certain that the precise nature of the defense is apparent.

12. The motion for more specific statement is insufficient, for that section 2720 provides that if the reason for such demand for a more specific statement exists outside the pleading, the motion must state the same and be supported by affidavit.

20 13. It is apparent to the most casual observer that the reason for such demand made by plaintiff exists outside the pleadings, and therefore, in the absence of such a statement and supported by an affidavit, the motion must be overruled.

14. The allegation of defendant that to enforce this said decree would entail upon it great loss, to wit, in the sum of $14,000.00 and more, is quite material for more reasons than one, and plaintiff's motion to strike such allegations should be denied.

Wherefore defendant says that plaintiff's motion for more specific statement and to strike should be overruled and denied.

Said motion for more specific statement was sustained and said objections overruled, and the defendant at the time duly excepted to such ruling. Defendant duly filed the following resistance and objection to plaintiff's motion for order and judgment:

Defendant's Resistance and Objection to Plaintiff's Motion to Enter Order Prayed for in Petition.

Comes defendant and, objecting to and resisting the plaintiff's motion to enter order prayed for in the petition, says:

First. That it is shown by defendant's answer why such an order should be made.

Second. It is not shown by the record and pleadings in
21 this proceeding that plaintiff is entitled to such order.

Third. Sustaining such motion would deprive defendant of a substantial right.

Fourth. Defendant has a right to a trial and to a hearing before any order is made requiring it to perform the decree referred to in plaintiff's petition.

Fifth. Defendant further objects to plaintiff's motion because it has never had its day in court, because the decree which plaintiff wishes to enforce as against this defendant was made in a case where defendant was not a party, to which it is a stranger, and because this is an original proceeding for mandatory writ in which there is a party, this defendant, who is a new and independent party and who is not obliged to obey or perform any order or judgment in any other or former action until it is first ascertained and adjudged by a regular trial that it is obligatory upon it to perform such order.

Sixth. Defendant objects to the entry of such order, because there are matters and issues of fact made by the answer upon which de-

fendant has the right to be heard in the regular way, and to sustain such motion would deprive it of a trial altogether.

Seventh. To sustain such order and motion would deprive defendant of its liberty and property without due process of law.

22 Eighth. The sustaining of such motion would be denying to the defendant the equal protection of the law.

Ninth. Such order is repugnant to and in violation of the second paragraph of the first section of the 14th amendment to the Constitution of the United States.

IOWA CENTRAL RAILWAY COMPANY,
By ANTHONY C. DALY.

(Endorsed:) Service of this abstract admitted this April 3d, 1890. John Y. Stone, att'y gen'l."

And during the pendency of said cause the defendant (now pl'ff in error) filed in said supreme court on Jan. 18, 1890, a motion to transfer said cause to the Federal court, said motion being in the words and figures following, to wit:

23 "THE STATE OF IOWA
against
THE IOWA CENTRAL RAILWAY COMPANY.

Petition for Transfer to Federal Court.

To the honorable the supreme court:

Your petitioner, The Iowa Central Railway Company, respectfully shows that it is the defendant in the above-entitled cause, and that the same was commenced on or about the 10th day of September, 1889, in said supreme court; that your petitioner was at the time of bringing said cause and still is a citizen and resident of the State of Illinois, and the plaintiff is a citizen of the State of Iowa.

Your petitioner further shows that there is and was at the time said cause was brought a controversy between your petitioner and the said plaintiff, The State of Iowa; that said action was brought by said plaintiff for the purpose of compelling your petitioner to operate a line of railway from Manly Junction to Northwood, Iowa, and that the matter in dispute exceeds the sum of two thousand dollars, exclusive of all costs and interest whatsoever.

Your petitioner further represents that this action has not been tried, but is now pending for trial, in the said supreme court of

24 Iowa, and that your petitioner desires to remove the same into the circuit court of the United States for the southern district of Iowa, in pursuance of the act of Congress in that behalf provided.

Your petitioner says further that it has filed the affidavit, which is hereto attached, required by the statute in such cases, and offers herewith its bond, executed by George Glick, as surety, in the penal sum of five hundred dollars, conditioned as by said act of Congress required.

Your petitioner therefore prays that the said bond may be accepted as good and sufficient according to the said act of Congress, and that the said action may be removed into the next circuit court of the United States in and for said southern district of Iowa, pursuant to law, and that no further proceeding may be had therein in this court.

IOWA CENTRAL RAILWAY COMPANY,
By ANTHONY C. DALY, *Its Attorney.*

STATE OF IOWA, }
Marshall County, } *ss:*

C. H. Ackert on oath says he is the general manager of the said Iowa Central Railway Company; that he has read the foregoing petition and knows the contents thereof, and the statements
25 and allegations therein contained are true, as he verily believes.

C. H. ACKERT.

Subscribed by the said C. H. Ackert in my presence and by him sworn to before me this 17th day of December, 1889.

Witness my hand and seal notarial the last year and day above written.

R. A. DUGAN,
[SEAL.] *Notary Public in and for Marshall County, Iowa.*

THE STATE OF IOWA }
vs.
THE IOWA CENTRAL RAILWAY COMPANY. }

Affidavit.

STATE OF IOWA, }
Marshall County, } *ss:*

C. H. Ackert on oath says he is the general manager of the Iowa Central Railway Company and is fully authorized by said company to make this affidavit in its behalf; that he has reason to believe and does believe that from prejudice and local influence the said Iowa Central Railway Company will not be able in this case to obtain justice in said State court.

C. H. ACKERT.

Subscribed by the said C. H. Ackert in my presence and
26 by him sworn to before me, at Marshalltown, in said Marshall county, this 17th day of December, 1889.

Witness my hand and seal notarial the last year and day above written.

R. A. DUGAN,
[SEAL.] *Notary Public in and for Marshall County, Iowa.*

Bond.

Know all men by these presents that we, The Iowa Central Railway Company, as principal, and George Glick, of Marshalltown, Iowa, as surety, are hereby held and firmly bound unto the State of Iowa in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the said Iowa Central Railway Company shall enter and file or cause to be entered and filed in the next circuit court of the United States in and for the southern district of Iowa, on the first day of its session, copies of all process, pleadings, deposition, testimony, petition, answer, and all other proceedings in a certain action now pending in the supreme court of Iowa, in which The State of Iowa is the
27 plaintiff and the said Iowa Central Railway Company is the defendant, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such action from said State court to said United States court, then this obligation to be void; otherwise to remain in full force and effect.

THE IOWA CENTRAL RAILWAY COMPANY,
By C. H. ECKERT, *General Manager.*
GEORGE GLICK, *Surety.*

STATE OF IOWA, }
Marshall County, } *ss:*

George Glick, of said Marshall county, the surety named in the foregoing bond, being duly sworn, deposes and says he is a resident of the State of Iowa and a property-holder therein; that he is worth one thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution; that he has property in the State of Iowa liable to execution of the value of more than one thousand dollars.

GEORGE GLICK.

Subscribed by the said George Glick in my presence and
28 by him sworn to before me this 17th day of December, 1889.
Witness my hand and seal this 17th day of December, 1889.

THEO. F. BRADFORD,
[SEAL.] *Notary Public in and for Marshall County, Iowa.*"

Which motion for change of forum was by the court overruled, and defendant duly excepted.

29 And said cause was tried in said supreme court on the foregoing record, and on the 26th day of October, 1891, said court filed its decision in writing, the same being in the words and figures following, to wit:

"THE STATE OF IOWA
vs.
IOWA CENTRAL R'Y CO.

Application on behalf of the State for an order against defendant to show cause why it should not be compelled to obey a decree of this court entered against the Central Iowa R'y Co. and why a writ of mandamus injunction should not issue against it.

Defendant having answered, plaintiff moves for an order as prayed on the pleadings and proceedings as set out, and the case is submitted on this motion.

John Y. Stone, att'y gen'l, for the State; Anthony C. Daly, for defendant.

GIVEN, *J.*:

I. The application on behalf of the State sets out the decree of this court rendered Oct. 27, 1887, in the case of The State of Iowa *vs.* The Central Iowa R'y Co. and The Burlington, Cedar Rapids & Northern R'y Co., and alleges that the defendant company
30 has become the successor, assignee, and grantee of the Central Iowa R'y Co. and, as such, is operating said line of railway, contrary to the provisions of said decree and in violation thereof, and is disregarding and disobeying the mandate thereof.

This decree was entered on appeal in an action to enforce an order of the railway commissioners, and the part requiring notice is as follows: 'And it is further ordered, adjudged, and decreed that the said Central Iowa Railway Company, its officers, agents, and servants, its successors, assigns, grant-s, and lessees, and each and every thereof are directed and commanded, until otherwise ordered, to forever maintain and operate that certain piece and part of railroad lying and being between the depot buildings of Northwood, Iowa, and Manly Junction, Iowa, and will run its and their trains, engines, cars, both passenger and freight, according to regular and public schedule time, on and over said part of said railroad, giving to any and all the public desiring to travel over the same and to ship freight over the same the accommodations and facilities incident to and usual to such desired service, and will maintain and operate said part of said railroad in connection with its other road extending south from Manly Junction, Iowa, to Albia, Iowa, and with-
31 out unusual and unnecessary delays, and to enforce this the third paragraph of this decree both a preventive and mandatory writ of injunction will issue at any time on the request of the State of Iowa or its attorney.'

The prayer of this application is that the defendant be required to show cause why it should not obey the mandate and order contained in said decree and why a writ of mandatory injunction should not issue against it thereon, and that upon the hearing hereof an order be made requiring the defendant to obey said decree, and that a writ of mandatory injunction be ordered to issue against defendant to enforce said decree.

The defendant in its answer and amendments thereto says that

it is not the successor, assignee, and grantee of the Central Iowa Railway Company; that it has never been adjudged to be such; that no judgment or decree has ever been rendered against it commanding it to perform any of the acts in said decree required, and that no demand has been made upon it to perform any order or to do any act commanded in said decree. It is also alleged in the answer that at the time of and long prior to the rendering of said decree all the property of the Central Iowa
32 R'y Co. had been taken possession of and was being held by the United States circuit court for the southern district of Iowa, through a receiver appointed by that court Dec. 1, 1886, in a case there depending wherein The Central Trust Company of New York was complainant and the said Central Iowa R'y Co. was defendant; that a decree of foreclosure of a mortgage was rendered in that court and all the property of the Central Iowa Railway Company sold thereunder on the 17th day of September, 1887, to James Thompson, which sale was duly confirmed and conveyances ordered and made.

That James Thompson assigned all his right, title, and interest so purchased to the Iowa Railway Co., which company subsequently conveyed to this defendant. The defendant further alleges that the Central Iowa R'y Co. was defunct and deceased at the time of the rendition of said decree against it because of the taking possession of its property as aforesaid; that the defendant company had no existence and was not organized until long subsequent to the rendering of said decree and had no notice of said suit and was not a party thereto. It is further alleged that the B., C. R. & N. R'y Co. is now and for some time past has been operating the
33 railway in question from Manly Junction to Northwood, for which it pays defendant a rental of $14,000 a year, and that if defendant is required to comply with said decree it will be damaged in that sum. With its answer the defendant filed a demand for a jury trial herein. The State filed a motion to strike a paragraph from the answer stating that to perform the decree would entail great loss on the defendant, and also a motion for more specific statement in the answer, both of which were sustained; to which the defendant excepted. As the rulings upon these motions are not before us for review, they will not be further noticed.

The application and answer having been filed as stated, the attorney general filed a motion on behalf of the State as follows: 'Comes now the plaintiff and moves the court to enter the order prayed for in the petition herein upon the ground that the defendant in its answer has not shown cause why such order should not be made, and for the further reason that upon the record and pleadings in this proceeding it appears that the plaintiff is entitled to such order.'

II. It will be observed that the decree is against the Central
34 Iowa R'y Co., its officers, agents, and servants, its successors, assigns, lessees, and each and every thereof, and that it requires of these the performance of certain duties in the future. It is a final adjudication as to all these persons of all matters em-

braced in it. It requires no argument to show that this court has power to enforce this decree against the Central Iowa R'y Co. and any person proven or admitted to be its officer, agent, servant, successor, assignee, grantee, or lessee. The contention of the Iowa Central R'y Co. is that it has denied in its answer that it is successor, assignee, or grantee of the Central Iowa R'y Co.; that it is entitled to a trial of that issue by a jury, and that this court has no jurisdiction to so try it, and therefore cannot make the order asked. It is contended on behalf of the State that the answer shows that the Iowa Central R'y Co. is such successor, assignee, and grantee, and that the order asked should therefore be granted upon the record and pleadings before us.

It is denied in the answer that the Iowa Central R'y Co. is such successor, assignee, or grantee. It is not, however, an unqualified denial, but based upon the facts we have stated.

35 It is clear that if these facts do not support the denial then it is as if there were no denial, or, in other words, if the facts stated in the answer show that this company is such successor, assignee, or grantee, then that allegation is not denied. It will be seen by the facts, as we have stated them, that this company now and for some years past has owned and operated the line of railroad in respect to which the decree was entered, and is in the enjoyment of all the rights and privileges granted by the laws of the State to such corporations for the maintenance and operation of railroads within the State.

It is alleged as reasons why it is not such successor, assignee, or grantee and not amenable to the decree, that it was not in existence when the decree was entered and not a party to it; that it has never been adjudged to be such successor, assignee, or grantee, and that it has never been commanded or demanded to perform any part of the decree by judgment of a court or otherwise. That it was incorporated after the decree was entered is no reason why it might not become the successor, assignee, or grantee of the Central Iowa R'y Co., and surely no adjudication or demand is necessary to cause that relation.

36 There can be no doubt but that the facts stated do show that this company is the successor of the Central Iowa R'y Co. within the meaning of the decree. This fact being thus established, it requires no adjudication; the relation exists, and with it the duties and obligations imposed by the decree.

III. The decree requires that the part of the road between Manly Junction and Northwood shall be operated in the manner specified in connection with the other part of that road extending south to Albia. The answer shows that it is not and has not been so operated for some time, but that that part of the road is being used by the B., C. R. & N. R'y Co. in connection with its line, under a lease from the Iowa Central R'y Co. at a rental of $14,000 per year. It is alleged that to require the Iowa Central R'y Co. to operate it under the decree will deprive it of this rental, to its damage in that amount. This, even if true, is no justification for disregarding the decree. There is nothing in the decree to prevent a leasing of this part of

the road to be used in connection with another line, but such
37 a use is not an operation of it as required by the decree.
From the record before us we reach the conclusion that the Iowa Central R'y Co. is successor to the Central Iowa R'y Co. and as such is bound by the decree of this court heretofore entered against that company and its successors, and that in failing to operate that part of its road between Manly Junction and Northwood, in connection with the part extending south to Albia, in the manner specified in the decree it is continuously disregarding and violating said decree, and that an order should be granted as asked on behalf of the State."

And on the same day, Oct. 26, 1891, a final judgment was rendered against defendant, the same being in the words and figures following, to wit:

"THE STATE OF IOWA }
vs.
IOWA CENTRAL R'Y CO. }

In this cause the court, being fully advised in the premises, file their written decision and find that pl'ff is entitled to an order for the operation of the road by defendant as prayed for, and that a writ issue accordingly.
38 It is further considered by the court that the defendant pay the costs of this court, taxed at $22.75, and that execution issue therefor."

And afterwards there were filed in the office of the clerk of said supreme court a writ of error for the removal of said cause to the Supreme Court of the United States, a bond, citation, and assignment of errors, and the same are hereto attached in original form as part of the return to said writ, true and correct copies thereof having been retained in the office of said clerk:

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between The State of Iowa as plaintiff and The Iowa Central Railway Company as defendant, wherein is drawn in question the validity of a certain decision or judgment of said court on the ground of its being repugnant to the Constitution of the United States and the decision was against the validity of the right claimed under the Constitution, a manifest error hath happened, to the great damage of the said Iowa Central Railway Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly

and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 21st day of May, A. D. 1892.

Seal U. S. Circuit Court, Southern District Iowa.

EDWARD R. MASON,
Clerk U. S. C. C., Southern Dist. of Iowa.

Allowed.
G. S. ROBINSON,
Chief Justice of the Supreme Court of Iowa.

[Endorsed:] Iowa Central Railway Company, pl'ff in error, *vs.* The State of Iowa, def't in error. Writ of error. Filed May 21, 1892. G. B. Pray, clerk of supreme court.

40 Know all men by these presents that we, the undersigned, are held and firmly bo-nd unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa; to which payment, well and truly to be made, we bind ourselves, our heirs, and our executors, jointly & severally, by these presents.

Sealed with our seals and dated this 20th day of May, A. D. 1892.

Whereas lately, at the May term, 1892, of the supreme court of Iowa, in a suit depending therein between The State of Iowa, plaintiff, and The Iowa Central Railway Company, defendant, judgment was rendered against the said Iowa Central Railway Company, and the said Iowa Central Railway Company having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the said judgment in the aforesaid action, and a citation directed to the State of Iowa, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1892: Now, the condition of the above obligation is such that if the said Iowa Central Railway Company, plaintiff in error, shall prosecute the said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

IOWA CENTRAL RAILWAY COMPANY,
Principal.

T. J. FLETCHER, *Surety.*

Approved.
G. S. ROBINSON,
Chief Justice of the Supreme Court of Iowa.

21st May, 1892.

STATE OF IOWA, } ss:
Marshall County, }

I, James Cammack, clerk of district court within and for said county, do hereby certify that the surety whose name is subscribed to the foregoing bond is good and sufficient for the sum therein named, and I, as said clerk, would accept and approve the same if presented to me in this county for the purposes therein set forth.

Witness my hand and seal of the district court this 20th day of May, A. D. 1892.

[Seal District Court, Marshall County, Iowa.]

JAMES CAMMACK,
Clerk of District Court.

[Endorsed:] Iowa Central Railway Company, pl'ff in error, *vs.* The State of Iowa, def't in error. Bond. Filed May 21, 1892. G. B. Pray, clerk of supreme court.

41 The United States of America to the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, in the year of our Lord one thousand eight hundred and ninety-two, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein The Iowa Central Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree and judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Gifford S. Robinson, chief justice of the supreme court of Iowa, this 21st day of May, A. D. 1892.

G. S. ROBINSON,
Chief Justice of the Supreme Court of Iowa.

We accept due and legal service hereof this 21st day of May, A. D. 1892, and received a copy hereof same day for the State of Iowa, defendant in error.

JNO. Y. STONE,
Attorney General of the State of Iowa.

[Endorsed:] Iowa Central Railway Company, plaintiff in error, *vs.* The State of Iowa, def't in error. Citation. Filed May 21, 1892. G. B. Pray, clerk of supreme court.

42 *Assignment of Error.*

1. The court erred in rendering judgment, for that it is inconsistent with and contrary to the second clause of section one of the fourteenth amendment to the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

2. And the court erred in overruling the petition and claim for the transfer of the cause to the circuit court of the United States for the southern district of Iowa.

Wherefore plaintiff in error, The Iowa Central Railway Company, prays that the judgment be reversed.

ANTHONY C. DALY,
Attorney for Iowa Central Railway Company.

[Endorsed:] Iowa Central Railway Company, pl'ff in error, *vs.* The State of Iowa, def't in error. Assignment of error. Filed May 21, 1892. G. B. Pray, clerk of supreme court.

43 "After the decision and final judgment the defendant filed a 'motion for rehearing,' and the same is herewith made a part of the return to said writ on the request of att'ys for plaintiff in error.

"In Supreme Court of Iowa, October Term, 1891.

THE STATE OF IOWA
vs.
THE IOWA CENTRAL RAILWAY COMPANY.

Motion for Rehearing.

Comes the Iowa Central Railway Company and moves the court to grant a rehearing herein for the following reasons:

First. The judgment impairs the privileges and immunities of the defendant, a citizen and corporation of the State of Illinois, contrary to the first paragraph of the second section of article four of the Constitution of the United States.

Second. The judgment of the court is in controvention of section two of article four of the Constitution of the United States, which ordains that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Third. The judgment of the court is a taking, and a deprivation, of defendant's property without due process of law, and is contrary to the second clause of the first section of article fourteen of the amendments to the Constitution of the United States.

44 Fourth. The judgment is in contravention of the second clause of section one of the fourteenth amendment to the Constitution of the United States in that it denied, and denies, to the defendant the equal protection of the laws.

Fifth. The judgment is contrary to the second clause of section one of the fourteenth amendment to the Constitution of the United States in that it is an enforcement of that which abridges the privileges and immunities of defendant, a citizen of the United States.

Sixth. The court erred in denying and overruling the defendant's petition and motion for a change of forum to United States circuit court for the southern district of Iowa.

Seventh. The court erred in denying the defendant's petition for the transfer of the action to the circuit court of the United States for the southern district of Iowa.

Eighth. The court erred in proceeding to judgment and in taking further action in the cause subsequent to the filing of defendant's petition (accompanied by a bond in due and legal form) for the transfer of the cause to the circuit court of the United States for the southern district of Iowa.

Ninth. The court erred in rendering judgment for the reasons offered by defendant and contained in its resistance to plaintiff's motion for judgment heretofore filed herein, as follows:

a. That it is shown by defendant's answer why such an order should not be made.

b. It is not shown by the record and pleadings in this proceeding that plaintiff is entitled to such order.

c. Sustaining such motion would deprive defendant of a substantial right.

45 *d.* Defendant has a right to a trial and to a hearing before any order is made requiring it to perform the decree referred to in plaintiff's petition.

e. Defendant has never had its day in court. The decree which plaintiff wishes to enforce as against this defendant was made in a case where defendant was not a party, to which it is a stranger. This is an original proceeding for mandatory writ in which there is a party—this defendant—who is a new and independent party and who is not obliged to obey and perform any order or judgment in any other or former action until it is first ascertained and adjudged by a regular trial that it is obligatory upon it to perform such order.

f. Defendant objects to the entry of such order because there are matters and issues of fact made by the answer upon which defendant has the right to be heard in the regular way, and to sustain such motion would deprive it of a trial altogether.

g. To sustain such order and motion would deprive defendant of its liberty and property without due process of law.

h. The sustaining of such motion would be denying to the defendant the equal protection of the law. Such order is repugnant to and in violation of the second paragraph of the first section of the fourteenth amendment to the Constitution of the United States.

Tenth. The court erred in rendering judgment in the absence of any proof or evidence of any kind of any demand having been made upon defendant to obey the decree entered in the suit against the railway company whose successor defendant is claimed to be.

Eleventh. The judgment rendered is void for the reason
46 that the proceedings are irregular and are not in conformity with the practice as required in such cases by Code of Iowa, section 3379.

IOWA CENTRAL RAILWAY CO.,
By ANTHONY C. DALY, *Its Attorney.*

N. B.—The defendant will ask to be heard orally on this motion.

The above motion having been presented to me in vacation it is ordered that upon filing same with the clerk of this court the decision, judgment and order hereinbefore made in this case, be suspended until after the final argument.

JOSIAH GIVEN,
Judge of the Supreme Court of Iowa.

Dated November 2d, 1891."

Which motion for rehearing having been fully considered, was, by the court, overruled on the 29th day of May, 1892.

47 An order was made by Ch. J. Robinson suspending proceedings, and the same is hereto attached on the request of att'y for plaintiff in error:

"In Supreme Court of Iowa.

THE STATE OF IOWA
vs.
THE IOWA CENTRAL RAILWAY COMPANY.

Order.

In this cause it is ordered that as the Iowa Central Railway Company has herein sued out a writ of error to the Supreme Court of the United States and has executed a sufficient bond, the same may and shall operate as a supersedeas, and no writ of mandamus or other writ shall issue out of this court or out of the clerk's office thereof until the Supreme Court of the United States shall have determined whether or not there was error in the judgment of this court in this cause.

Signed May 25, 1892.

G. S. ROBINSON,
Chief Justice of the Supreme Court of Iowa."

48 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true, and correct transcript of the record, decision, and final judgment in a certain cause tried and decided in said court, wherein The State of Iowa was plaintiff and The Iowa Central Railway Company, defendant.

And I further certify that the writ of error for the removal of said cause to the Supreme Court of the United States, the bond, citation, and assignment of errors are attached to said transcript in original form and transmitted herewith as part of the return to said writ, and true and correct copies thereof have been made and are lodged in my office, and this return is made in obedience to said writ of error.

Seal of the Supreme Court of Iowa.

In testimony whereof witness my signature and the seal of said court, at Des Moines, Iowa, this 13th day of June, 1892.

G. B. BRAY,
Clerk Supreme Court, Iowa.

Endorsed on cover: Case No. 15,067. Iowa supreme court. Term No., 128. The Iowa Central Railway Company, plaintiff in error, *vs.* The State of Iowa. Filed June 30th, 1892.

FILED,
SEP 14 1895
JAMES H. McKENNEY,
CLERK.

ARGUMENT AND BRIEF OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 128.

THE IOWA CENTRAL RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF IOWA.

ANTHONY C. DALY, for Plaintiff in Error.

MILTON REMLEY, Atty. Genl., for Defendant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 128.

THE IOWA CENTRAL RAILWAY COMPANY,
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THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF IOWA.

ARGUMENT AND BRIEF OF PLAINTIFF IN ERROR.

ANTHONY C. DALY, for Plaintiff in Error.
MILTON REMLEY, Atty. Genl., for Defendant.

STATEMENT.

In the year 1869 the St. Paul & St. Louis R'y. Co. was about building a railway through the state of Iowa from north to south and made a contract with the residents of Northwood for the erection of a depot and for the construction of a railway to said town, which contract was transferred by said railway company, with the consent of said town people, to the Central Railroad Company of Iowa, which latter company built the line of railway to Northwood and there established a station. There was donated to said last named corporation depot grounds and some money in taxes and a deed of the swamp land of Worth county, Iowa, of which county Northwood is the county seat. Nothing was ever realized upon the deed of swamp land either because there was none or because the county of Worth

had previously granted and conveyed its interests therein to others.

The said Central Railroad Company of Iowa operated the railway to Northwood from about 1869 to 1874. From 1874 to 1879 it was operated by a receiver appointed by the circuit court of the United States for the southern district of Iowa in a foreclosure proceeding there pending. The said railway was subsequently, by decree of said court, sold at public auction to the highest bidder to satisfy such mortgage and such bidder transferred his purchase to an organization incorporated in Iowa as the Central Iowa Railway Company. The last named company took the title to the property by virtue of such foreclosure proceedings and sale thereunder without notice of any claim of the town people of Northwood, and in 1879 took possession thereof and commenced to operate the same.

The Burlington, Cedar Rapids & Northern Railway Company for many years prior to 1879 had joint running arrangements with the Central Railroad Company of Iowa and had joint use of the track of the Central Railroad Company of Iowa from Manly Junction in Worth county to Northwood in the same county, a distance of about eleven miles, and in 1880 the said Central Iowa Railway Company finding it very unprofitable to operate the line from Manly Junction to Northwood leased to the Burlington, Cedar Rapids & Northern Railway Company the said track from Manly Junction to Northwood and contracted for the exclusive use thereof to the said Burlington, Cedar Rapids & Northern Railway Company for the consideration of $14,000.00 per year, and thereafter the said Central Iowa Railway Company did not operate the line north of said Manly Junction.

In 1881 the people of Northwood complained to the Board of Railway Commissioners of Iowa that the Central Iowa Railway Company was not operating that part of its line aforesaid and asked the board to order the Central Iowa Railway Company to cancel its contract with the said Burlington, Cedar Rapids & Northern Railway Company and to operate the said eleven miles of its railway. The board in 1883 granted the order prayed for by the Northwood people and the Central Iowa Railway Company refusing to obey said order the board requested the attorney general of Iowa to commence proceedings in equity, as provided by statute of Iowa, in the district court of Iowa against the Central Iowa Railway Company and the Burlington, Cedar Rapids & Northern Railway Company for the enforcement of its order. The attorney general did so in 1884, and in 1886 the said district court of Iowa determined that such order of the Board of Railway Commissioners was reasonable and adjudged that the said Central Iowa Railway Company should obey the same, whereupon the said Central Iowa Railway Company appealed therefrom to the supreme court of Iowa. While such cause was pending in said supreme court on appeal, and on the 1st day of Decem-

ber, 1886, said Central Iowa Railway Company was made defendant in a suit in equity brought in the circuit court of the United States for the southern district of Iowa for the foreclosure of its mortgage executed to the Central Trust Company of New York, and upon said 1st day of December, 1886, a receiver was appointed in such foreclosure suit by said circuit court of the United States and said receiver immediately thereafter, and upon the day of his appointment, took possession of all of the property and railway of said Central Iowa Railway Company and ousted the said Central Iowa Railway Company from the possession thereof.

At the May, 1887 term, of the said United States circuit court a decree of foreclosure was entered and sale ordered to satisfy the mortgage, and on the 17th day of September, 1887, at public auction the railway and property of said Central Iowa Railway Company was sold to the highest bidder. Such bidder subsequently assigned his purchase to the Iowa Railway Company and the latter company made conveyance in August, 1888, to the Iowa Central Railway Company of Illinois, the plaintiff in error.

During the time of the receivership, and after the sale of the property as aforesaid, and on the 27th day of October, 1887, the supreme court of Iowa in said cause there pending affirmed the said judgment appealed from and made and signed the decree set out on page 3 of the printed transcript of record.

In May, 1889, the said circuit court of the United States ordered the receiver to transfer the railway and property to the purchaser at said foreclosure sale, and thereupon the Iowa Central Railway Company, the plaintiff in error, on the 30th day of May, 1889, took possession thereof.

Neither the receiver nor the plaintiff in error was in any way a party to the proceedings in the state court.

On the 27th of August, 1889, as the printed record shows on page 2, the state of Iowa began an original action of mandamus against the plaintiff in error, the Iowa Central Railway Company, in the supreme court of Iowa. The petition in mandamus was filed by the state as appears on page 2 of printed record and the Iowa Central Railway Company was by original notice required to appear in the supreme court of Iowa on the 1st day of the October, 1889 term.

At the October term, 1889, of said supreme court of Iowa the Iowa Central Railway Company appeared and protested against the supreme court taking jurisdiction thereof, insisting that the proper place of trial was a *nisi prius* court, but the supreme court overruled the objections and ordered an answer be made to such mandamus petition at the next term thereof, in January, 1890. Thereupon, and at said January, 1890 term, the Iowa Central Railway Company filed its answer, specifically denying the allegations of the petition. (See pages 4 and 5 of the printed record.) Upon amending its answer (see pages 6 and 7 of the printed record), and in due time, the Iowa Central Railway

Company filed its demand for a jury trial. (See printed record, page 7.) At said January term, the supreme court ordered the record be printed and presented at its next term in April, 1890, which was done, and the attorney general, then at said April, 1890 term, filed a paper entitled Motion for Order and Judgment, as set out on page 8 of printed record to which motion the Iowa Central Railway Company filed its resistance and objections, insisting upon the right of being heard in the regular way, that mandamus should isssue only after judgment, and urging that to sustain such motion would deprive the railway company of a hearing, of a substantial right, of its liberty and property without due process of law, of the equal protection of the law, and would be repugnant to and violative of the second paragraph, 1st section, 14th amendment to the constitution of the United States, as fully set out on pages 10 and 11 of the printed record.

The said supreme court at its October, 1891 term, disregarding the objections of plaintiff in error, ignoring its demand for a hearing, for a jury trial in the manner designated by the laws of Iowa, filed an opinion in writing sustaining the motion of the state and ordered that a writ of mandamus issue. Whereupon the railway company filed its petition for a rehearing as set out in pages 20 and 21 of the printed record, which was denied, and upon the entry of the order allowing the mandamus the Iowa Central Railway Company in due time sued out its writ of error and brought the case to this court.

In brief, then, this is an action of madamus, an original cause in the supreme court of Iowa, against the Iowa Central Railway Company to compel it to operate the line of railway from Manly Junction, Iowa, to Northwood, Iowa, now operated under lease by the Burlington, Cedar Rapids & Northern Railway Company, the state alleging that the Iowa Central Railway Company is bound to operate same under a decree rendered in a suit in equity wherein the state on behalf of the people of Northwood was the plaintiff and the Central Iowa Railway Company and the Burlington, Cedar Rapids & Northern Railway Company, defendants, the state claiming that the Iowa Central Railway Company, though not a party to such suit and not then in existence, and though it took the property from the purchaser thereof at public auction, under said foreclosure of mortgage, was bound by such decree claiming it became by so purchasing the successor, grantee and assignee of the Central Iowa Railway Company.

The supreme court of Iowa assumed jurisdiction of the action of mandamus, and, ordering mandamus to issue, refused the railway company a hearing, deprived it of its day in court, denied it a trial by jury, sustained a motion unknown to the practice, disposed of the action in an irregular and unheard of way, and without due process of law, and deprived the railway company of the equal protection of the law.

ERROR ASSIGNED.

The railway company complaining thereof brings the cause to this court and asks a reversal of the judgment upon its first assignment of error, viz:

The court erred in rendering judgment for that it is inconsistent with and contrary to the second clause of section 1 of the 14th amendment to the constitution of the United States, which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

ARGUMENT.

The law of Iowa is as follows: Title XVII of Code of Iowa relates to procedure, and section 2504, Chapter 1 provides that all remedies in civil cases in the courts of this state are divided into actions and special proceedings, and section 2507 is: All forms of action are abolished in this state, but the proceedings in a civil action may be of two kinds, ordinary or equitable. Section 2520 is as follows: The provisions of this code concerning prosecution of a civil action apply to both kinds of proceeding, whether ordinary or equitable, unless the contrary appears, and shall be followed in special proceedings not otherwise regulated so far as practicable.

Trial by jury shall remain inviolate. No person shall be deprived of life, liberty or property without due process of law. Constitution of Iowa, Sec. 9, Art. 1.

Chapter 9 of said title XVII, has this provision as to jury trials: Section 2740. Issues of fact in an action in an ordinary proceeding must be tried by jury unless the same is waived, and Section 2741—All issues of fact in ordinary actions shall be tried upon oral evidence taken in open court, except that depositions may be used as now provided by law. Section 2664 is: When the facts stated in the answer are not sufficient to constitute a defense the adverse party may demur.

Title 20 is of Procedure in Particular Cases—Chapter 8, of Actions of Mandamus.

Sec. 3373. The action of mandamus is one brought in a court of competent jurisdiction to obtain an order of such court commanding an inferior tribunal, board, corporation or person to do or not to do an act, the performance of which the law enjoins, as a duty resulting from an office, trust or station.

Sec. 3374. The order may be issued by the district court to any inferior tribunal or to any corporation, officer or person, and by the supreme court to any district court if necessary, and also in any other case where it is found necessary for that court to exercise its legitimate power.

Sec. 3378. The plaintiff in such action shall state his claim, and shall also state facts sufficient to constitute a cause

for such claim, and shall * * * pray an order of mandamus commanding defendant to fulfill such duty.

Sec. 3379. The *pleading and other proceedings* in any action in which a mandamus is claimed *shall be the same in all respects* as nearly as may be as in an *ordinary action* for the recovery of damages.

Sec. 3381. When the plaintiff recovers judgment the court may include therein a peremptory order of mandamus, directed to the defendant, commanding him forthwith to perform the duty to be enforced, together with a money judgment for damages and costs, upon which an ordinary execution may issue.

Maxwell, on Code Pleading, page 224, says. "In modern practice mandamus is nothing more than an action at law between the parties." Chief Justice Taney says the same in Com. vs. Dennison, 24 Howard, 97.

The action of mandamus is a civil action at law says the Iowa supreme court in Brown vs. Crego, 29 Iowa, 34.

In Chance vs. Temple, 1 Iowa, 179, the nature of the action is generally discussed and at page 196, bottom, it is stated that mandamus can only issue after judgment; at page 198, bottom, a party is not to be concluded until he is fully heard both upon the law and the facts; and also that all proper guards should be thrown around it to prevent it becoming an instrument of oppression.

In Iowa vs. Jones, 10 Iowa, 67, near bottom, it is said: "It is the intention of the law of this state to assimilate special proceedings like the present (an action of mandamus) to actions, as far as it is compatible with their nature, and in accordance with this idea the relator should have been permitted to reply and so either party until they arrived at an issue of fact or of law."

In Meyer vs. Dubuque, 43 Iowa, 594, bottom, it is held that it is very important in the proper administration of justice that the course of procedure be uniform and consistent.

In Whitney vs. Railway, 53 Iowa, 651, it was determined that the same right to trial by jury existed in special proceedings as in an ordinary action.

In High on Ex. Leg. Rem., page 11, top, it is stated that mandamus is regarded as an original proceeding rather than the mere final process of a suit.

Justice Miller says, in Riggs vs. Johnson County, Iowa, 6 Wall., 198, that mandamus as given by the Iowa statute is not a mere ancillary writ, but is in all cases a separate action, and that this is the common law rule.

In Wright vs. Connor, 34 Iowa, 241 bottom, 242 top, it is held that "The writ of mandamus is issued after judgment in a "proper case and not as original or intermediate process, which "seems to have been attempted in this case As there had been "no adjudication of the court upon the matter of the petition

"and the parties rights involved, the issuing of the writ was "unwarranted."

There are two rules in regard to issuance of mandamus well settled by all of the authorities. First, the party applying for it must show a clear legal right to have the thing which is asked for done. Second, it must be the clear legal duty of the party sought to be coerced to do the thing he is called upon to do.

When first called upon by original notice the plaintiff in error appeared in supreme court and urged the impropriety of that court entertaining the proceeding and insisted that the *nisi prius* court was the place for action, because the machinery for trial was there provided, and cited the holding of the court in Westbrook vs. Wicks, 36 Iowa, 383, as follows: "We have no jurisdiction in the premises. This court is one of appellate jurisdiction. A writ of mandamus issues from the district court. It may issue from the supreme court to a district court if necessary, and in any other case where it is found necessary to enable it to exercise its legitimate power. This is not such a case. The express grant in enumerated cases implies a negation of it in those not mentioned. *Expressio unius est exclusio alterius.* The writ is refused."

And also the decision in U. S. Com. vs. Dubuque County, Morris, page * 50, bottom, where the court in speaking of the law relative to the power of the supreme court in mandamus said: "If the writs and process are to be issued from this court in ordinary cases whenever its interposition may be found beneficial, the business of the court may become very much augmented to the great inconvenience and delay of suitors and to to the detriment of public interest. Cases of the most trivial nature may be brought from the extreme portions of the territory," etc. Then with reference to the necessity of the writ and the power of this court to issue same in such a case it is said on page * 51: 'In other words is it necessary within the meaning of the statute. It only remains to inquire whether it would not properly be issued by another tribunal. *If the proper district court has jurisdiction of cases of this kind recourse to the supreme court cannot certainly be necessary.* It would doubtless be much more convenient and proper to apply to the district court in the first instance. From an examination of the various statutes in force in this territory it appears to be the evident intention of the legislature to vest the district courts to the fullest extent with general original jurisdiction in matters civil as well as criminal, and both at law and in equity. It appears to be the policy of the law to permit suitors a resort to these more convenient tribunals with the right of appeal to the supreme court." And on page * 52 top: "We deem it much more expedient and proper, more convenient to the parties concerned and more beneficial to the public in every respect that application for purposes of this nature should be made to the

district court of the proper county and such we believe to be the law of this territory." And at bottom of same page: "The exercise of that power therefore by the supreme court being unnecessary in ordinary cases for the reason that the district courts are fully competent for that purpose, we are clearly of the opinion that we have no jurisdiction over the matter and the motion for a peremptory mandamus will of course be denied."

Upon the conclusion of the court to take cognizance of the proceedings, and on filing its answer, the plaintiff in error demanded a trial in the regular way, demanded a jury, the production of evidence, etc., to which the court responded that there was no machinery provided for the trial of causes in such a manner in supreme court. When the paper entitled Motion for Order and Judgment, was filed the plaintiff in error again objected to the mode pursued; that such paper was unknown to the practice; that a hearing must be accorded the company; that there could be no judgment in mandamus without an adjudication by a trial, and that if the facts stated in answer were no defense the attorney general should demur. Plaintiff in error also showed to the court that such a course would deprive the railway company of its property without due process of law; would deprive it of the equal protection of the law, and would be running counter to the constitution of the United States—2nd paragraph, 1st section, 14th amendment; but without avail. And upon the sustaining of the plaintiff's motion the railway company again called attention to the injustice by a petition for a rehearing.

Plaintiff in error was not afforded an opportunity of presenting evidence to sustain the facts alleged in its answer. Questions of fact were here presented and plaintiff in error was not allowed to adduce evidence in support thereof. The supreme court without any precedent for its mode of proceeding oppressively assumed to pass judgment upon plaintiff in error.

The method to be pursued is prescribed by law and it is important in the proper administration of justice that such method be strictly adhered to. The Iowa court said many years ago it is important that the proper administration of justice in the course of procedure be uniform and consistent. There is no royal road to judgment. Mr. Justice Brewer once said it should be *super antiquas vias*.

Since the pendency of this cause in this court the supreme court of Nebraska had before it, in a case of original jurisdiction, the petition of the attorney general, who was praying for action of the court in certain matters, among others some having reference to the bond of a state treasurer and an action thereon. See In. Re. Rules Relative to Original Cases, 58 Northwestern Reporter, 945. While the Nebraska court accepted jurisdiction it held that such rules would be made so that the defendant would

have the full protection of the law, trial by jury, and due process included. The opinion referred to in the Nebraska court was published in the May 26, 1894, number of the Northwestern Reporter. In the number of June 9, 1894, the new rules for trial of original causes in the Nebraska court is published, and by such rules the machinery for a jury trial in supreme court is provided.

In 39 Pacific Reporter, 389, is the case of Territory of Oklahoma vs. C. R. I. & P. Ry. Co., decided since this writ of error was sued out. An original action of mandamus in the supreme court was brought by the proper officer of the territory for a mandamus on the railway company requiring it to maintain a station on its line. The supreme court held, first, that issues of fact joined in mandamus entitles the parties as a matter of right to a trial by jury, and second, that issues in mandamus being made upon which the parties have a right to a trial by jury and no means being provided by the legislature by which the supreme court can secure a jury, the cause must come to an end.

In Scott vs. McNeal, 154 U. S., 34, it is said: "The fourteenth article of amendment to the constitution of the United States, after other provisions which do not touch this case, ordains: 'Nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislature, its executive, or its judicial authorities. Virginia vs. Rives, 100 U. S., 313, 318, 319; Ex parte Va., Id. 339, 346; Neal vs. Delaware, 103 U. S., 370, 397. And the first one, as said by Chief Justice Waite in U. S. vs. Cruikshank, 92 U. S., 542, 544, repeating the words of Mr. Justice Johnson in Bank vs. Okely, 4 Wheat., 235, 244, was intended 'to secure the individual from the arbitrary exercise of the powers of government unrestrained by the established principles of private rights and distributive justice.' Upon a writ of error to review the judgment of the highest court of a state upon the ground that the judgment was against a right claimed under the constitution of United States, this court is no more bound by that court's construction of a statute of the territory or of the state, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the state or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another state. In every such case this court must decide for itself the true construction of the statute. Huntington vs. Attrill, 146 U. S., 657, 683, 684; Mobile & Ohio R. R. Co. vs. Tennessee, 153 U. S., 486, 492, 495. The words 'due process of law,' when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, 'mean a course of legal proceedings according to

those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.'"

Mr. Justice Field says, in delivering a dissenting opinion in O'Neil vs. Vermont, 144 U. S., 323, that "if it appears from the proceedings taken and the rulings made in the court below on questions brought to its notice that the rights of the accused affecting his liberty or his life have been involved, this court may exercise jurisdiction for the correction of errors committed."

Upon this record it is apparent the supreme court of Iowa acted oppressively and in violation of the constitutional rights of plaintiff in error guaranteed to it by the constitution of the United States and the amendments thereto.

IOWA CENTRAL RAILWAY COMPANY,
By ANTHONY C. DALY.

DEC 16 1895
JAMES H. McKENNEY,
CLERK

ARGUMENT AND BRIEF OF DEFENDANT IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. ~~129~~. 128

THE IOWA CENTRAL RAILWAY COMPANY,
Plaintiff in Error

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ANTHONY C. DALY, For Plaintiff in Error.

MILTON REMLEY, Attorney General, For Defendant.

(15,067.)

ARGUMENT AND BRIEF OF DEFENDANT IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 189.

THE IOWA CENTRAL RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ANTHONY C. DALY, For Plaintiff in Error.

MILTON REMLEY, Attorney General, For Defendant.

(15,067.)

STATEMENT.

The statement made by the plaintiff in error seems to be based upon the facts stated in the opinion of the Supreme Court of Iowa, in the case of State vs. The Central Iowa Ry. Co., reported in 71 Iowa, 410. Treating this cause as a part of, a supplement, or supplemental proceedings in the case last referred to, we readily admit the propriety of setting out the facts as plaintiff in error has done so far as the same appear in that case. We do not, however, agree with the plaintiff in error's statement that the cause at bar is an original action for the writ of mandamus in the Supreme Court of Iowa. Without repeating more of the plaintiff in error's statement than necessary, we call attention to the following facts:

1st. In 1881, the people of Northwood, Iowa, made application to the Railroad Commissioners of Iowa for an order to require the Central Iowa Ry. Co., to operate its railroad between Manly Junction and the town of Northwood.

2nd. After due notice to said Railway and a hearing before the said Railroad Commissioners such an order was made in 1883.

3rd. The said Railway Company refusing to obey, the Attorney General of Iowa brought an action in the District Court of Cerro Gordo county by equitable action against the said Railway company and the B. C. R. & N. Ry. Co., to enforce the said order. This was brought under the provision Chapter 133, Acts of 20th General Assembly, (McClain's Code § 2047), which is as follows:

Sec. 1. "The District Courts of this State shall have jurisdiction to enforce, by proper decrees, injunctions and orders, the rulings, orders and regulations affecting public right, made or to be made by the Board of Railroad Commissioners, such as are now, or may hereafter be authorized to be made by them for the future direction and observance of railroads in this state. The proceedings therefor shall be by equitable action in the name of the State of Iowa and shall be instituted by the Attorney General, whenever advised by the Board of Railroad Commissioners that any railway corporation, or person operating a line of road in this State, is violating and refusing to comply with any rule, order or regulation made by such Board of Railroad Commissioners, and applicable to such railroad or person. It shall be the duty of the Court in which any such cause shall be pending to require the issues to

be made up at the first term of the Court to which such cause is brought, which shall be trial term, and to give the same, precedence over other civil business. If the Court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is failing and omitting the performance of any public duty or obligation, the Court shall decree a mandatory and perpetual injunction compeling obedience to and compliance with such rule, order, or regulation by said railroad company, or other person, its officers, agents, servants and employes and grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants and employes who are in any manner instrumental in such violations, guilty of contempt of Court, and the Court may punish such contempt by fine not exceeding one thousand dollars for each offense, and may imprison the person guilty of contempt until he shall sufficiently purge himself therefrom. And such decree shall continue and remain in effect and be enforced until the rule, order or regulation shall be modified or vacated by the Board of Railroad Commissioners."

4th. Decree was rendered in the District Court of Iowa in and for Cerro Gordo county against the said Railway Company.

5th. The said railway appealed to the Supreme Court of Iowa, and after a full hearing the decree below was affirmed, March 15th, 1887.

The opinion of the Court is reported in 71 Iowa, 410. The decree was finally entered after a petition for rehearing was overruled in October, 1887. See page 3 of Transcript in this Court.

6th. During the pendency of the litigation, plaintiff in error, The Iowa Central Ry. Co., claims to have become the owner of the franchise and property of the Central Iowa Railway Co., at any rate, after the decree of the Supreme Court of Iowa was rendered, it was found to be in possession of the railway and refused to obey the decree.

7th. In September, 1889, the Attorney General made application to the Supreme Court of Iowa for an order on the plaintiff in error to show cause why it, as successor, assignee or grantee of the Central Iowa Ry. Co., should not be compelled to obey the

decree rendered in 1887, involving the property which plaintiff in error was using and operating.

8th. This proceeding was only supplemental to, and for the sole purpose of enforcing a decree duly entered in the Supreme Court after all parties had been duly served with notice and patiently heard according to the law of the land.

9th. It appears that the Court ordered the plaintiff in error to show cause, etc., at the October Term, 1889. Transcript p. 4.

10th. The showing made, labeled "answer" in Transcript, was filed in January, 1890, Transcript p. 4, and it and the amendments, pp. 6 and 7, constitute the *only* showing why the mandatory injunctions hould not bind the plaintiff in error.

11th. The cause was submitted to the Court on the showing made by the plaintiff in error, this being the effect of the motion of the Attorney General, Transcript, p. 8. The order of the Court was against the plaintiff in error and is found on Transcript, p. 14.

The facts contained in the statement of plaintiff in error on p. 3, in regard to the appointment of a receiver by the United States Circuit Court and sale of the property of the Central Iowa Ry. Co., and the dates are not in the record in this cause and have never been before the Supreme Court of Iowa, except such as are stated in the showing filed, pp. 4, 6 and 7 of Transcript, but it is not very material since it is admitted that all the proceedings in the United States Circuit Court which culminated in the transfer of the property to the plaintiff in error was during the pendency of the cause in the State Court.

The amendments to record on pp. 8, 9 and 10 of Transcript were but the printed briefs and objections filed in argument of the motions in the Supreme Court of Iowa.

ARGUMENT OF DEFENDANT IN ERROR.

The only error assigned is that the judgment of the Supreme Court of Iowa, in contravention of Sec. 1, of the 14th Amendment to the Constitution of the United States, deprived the plaintiff in error of property without due process of law.

The learned counsel for plaintiff in error assumes that this cause was an original action for mandamus commenced in the Supreme

Court of Iowa. This assumption is not warranted by the record or the facts. The action was brought originally in the District Court of Cerro Gordo County under Sec. 1, of Chap. 133, Acts of the 20th General Assembly, which we have set out in the statement. The Act provides that it shall be by *equitable action*. Appeal was taken to the Supreme Court of the State where the cause was tried again *de novo* and a decree rendered in the Supreme Court. 71 Ia., 410.

We may well be excused from following the counsel in the discussion of the nature of the action for mandamus, which is a statutory action or special proceedings under the Iowa Code, for there is nothing in the record justifying the assumption that this is such an action. We would say in passing, however, that no case can be found where a trial by jury was given in an action for mandamus under the Iowa Statute, or which has held that a jury trial is permissible.

It is needless also to discuss the question whether a writ of mandamus can issue before or after judgment, as there is no pretense that a writ was issued before judgment, or that one has been issued up to the present time.

The language of the Statute above quoted is, "The Court shall decree a mandatory and perpetual injunction, compelling obedience to and compliance with such rule, order or regulation by said railway company, or other person, its officers, agents, servants and employes, and grant such other relief as may be deemed just and proper."

This does not contemplate that any writ of any kind should issue, but with the proper parties before the Court, they having knowledge of the decree and being parties to it, obedience thereto is to be enforced by proceedings in contempt of Court.

The question arises whether the Supreme Court of Iowa as a Court of equity, having rendered a decree affecting certain property and the owners thereof, is obliged, in order to enforce the decree thus rendered against parties procuring an interest in the property *pendente lite*, to invoke the aid of a *nisi prius* Court.

This Court has frequently announced the familiar rule that the purchaser of property *pendente lite* is as conclusively bound by the

results of the litigation, whatever they may be, as if he had been a party to it from the outset. Among other cases, Tilton vs. Cofield, 93 U. S., 163; Whiteside vs. Haselton, 110 U. S., 296.

The alleged answers of the plaintiff in error show affirmatively that it purchased the property *pendente lite*. It is doubtful whether any subsequent proceedings or notice to the plaintiff in error was necessary, but out of excessive caution, a rule was entered requiring it to show cause why it should not obey the decree.

It seems to us such a familiar rule of equity that no citation of authority is needed, that a Court of equity, having jurisdiction of of a cause, has full power to bring before it all necessary parties for a full and complete determination of the rights of all persons interested in the property involved, or whose rights may be affected by the decree. It has ample power to enforce its decrees. If other parties claim an interest procured *pendente lite*, it is not improper to give them an opportunity to be heard before an attachment for contempt issue against them for disobedience to the decree.

This, in substance, was all that was done in this case. When the plaintiff in error was ruled to show cause why it should not obey the decree, it presented no reason which is valid in law. The so-called answer and amendments (transcript pages 4, 6, and 7) contained a denial that it was the successor of the Central Iowa Railroad, or the assignee or grantee. This was but a conclusion. The facts stated, however, show that it was the successor, assignee, or grantee, and no facts were stated which avoided the effect of the admitted facts. The submission of the cause to the Court on the pleadings was in effect a demurrer to plaintiff in error's answer. Admitting every fact well plead contained in the showing or answer of plaintiff in error to be true, no reason was given why it should not obey the decree rendered against the Central Iowa Railroad Co.

The plaintiff in error demanded a trial by jury. Were it an action at law, unless issuable facts were presented by the pleadings, a party would not be entitled to a trial by jury. But this is an equitable action in which no jury trial can be demanded.

We are told on page 8 of plaintiff in error's argument, that plaintiff in error was not afforded an opportunity to present evi-

dence to sustain the facts alleged in its answer. The last paragraph of the answer was on motion stricken out. (Transcript page 6). The motion for more specific statement was evaded (same page) and plaintiff in error refusing to plead issuably, the motion for judgment on defendant's answer was submitted. This left no fact to be submitted to the jury, had it been a law action. Furthermore plaintiff in error offered to introduce no evidence.

In view of this, counsel might as well insist upon trying a demurrer to a jury as the cause at bar.

II.

The provisions of the United States Constitution, relating to trial by jury, do not effect the right of the States to regulate trials in their own Courts.

Pearson vs. Yewdall, 95 U. S., 294.
McClane vs. Leecht, 69 Iowa, 401.
Edwards vs. Elliott, 21 Wall, 532.
Walker vs. Sauvinet, 92 U. S., 90.

A statute which provides for a trial after due notice to the parties and for giving a hearing to the parties and for deliberation and judgment with the right to appeal is not in violation of the United States Constitution.

Pearson vs. Yewdall, 95 U. S., 294.

Due process of law generally includes parties, a Judge or Court, regular allegations, and a trial according to some settled course of judicial proceedings.

Murray vs. Hoboken etc. Co., 18 How., 272.
Rees vs. City of Watertown, 19 Wall, 122.

It does not necessarily import a trial by jury.

Ex parte Meador, 1 Abb. U. S., 317.
Walker vs. Sauvinat, 92 U. S., 90.

The provisions for trial by jury do not relate to proceedings under statutory provisions and forms specially provided.

Ableman vs. Booth, 21 How., 506.
Miller vs. McQuerry, 5 McLean, 469.

It has been frequently held that due process of law does not demand the intervention of a jury.

There can be no doubt that the Iowa statute (Chap. 133, Acts 20th General Assembly) meets every requirement demanded by Sec. 1, of the XIV Amendment to the Constitution. A regular Court is provided for, also due notice, a regular course of proceedings, a hearing, judgment and the right to appeal to the highest Court of the State where the cause is heard *de novo*.

The contention of the plaintiff in error is not so much that the State deprived it of property without due process of law, as that the regularly constituted Courts of the State in administering the law, reached a conclusion unsatisfactory to it.

We contend there was no error committed by the Supreme Court of Iowa. But if it erred in its application of the law to this case, it would not be subject to review in this Court unless a federal question were involved.

It is said in Lent vs. Tilson, 140 U. S., 316, "But mere error in the administration of a Statute not involving jurisdiction of the subject and of the parties, could not justify this Court in its re-examination of the judgment of the State Court upon a writ of error, to hold that the State had deprived or was about to deprive the plaintiffs of their property without due process of law."

There can be no question that the State Court had jurisdiction of the subject matter, and also jurisdiction of the parties after due notice; that the Court followed the course of law provided by the statute. The plaintiff in error had his day in Court. Its answer to the rule to show cause why it should not obey the decree of the Court in regard to the property of the railway in question showed that it was in privity with the Central Iowa Railway Co. A full opportunity was given, after due notice to the plaintiff in error, to show such relationship did not exist. Having shown affirmatively that such relationship did exist and having failed to present a proper defense, if any it had, it cannot be said to be deprived of its property without due process of law.

Arrowsmith vs. Harmoning, 118 U. S., 194.
In re Converse 137 U. S., 625.
Colwell vs. Texas, 137 U. S., 692.

III.

The present Attorney General of the State is convinced that a motion to dismiss the writ might properly have been made because of the fact that it is so apparent that no federal question is involved. But his connection with the case having come so near the time for submitting the case, it is submitted on argument with a suggestion that a dismissal would have been proper.

Inasmuch as the matter has been so long delayed, we beg to call the Court's attention to the second Section of Chapter 133 of the Acts of the 20th General Assembly, of Iowa, which is as follows: "Whenever a decree shall be entered against a Railway Company or a person under Sec. 1, the Court shall render judgment for costs, including a reasonable attorney's fee for counsel representing the State in said case, and such judgment shall be enforced by execution." We are inclined to think that under this Section, although the case is in the United States Court, that judgment should be rendered for costs, including a reasonable attorney fee in the matter. We are not familiar with the rule of this Court in regard to costs in the application of a statute such as this, but on principle can see no reason why such costs should not be taxed in such sum as to the Court seems proper.

The policy of the law is that if the Railway will not obey the orders of the Board of Railway Commissioners, and if the State must resort to the Courts to enforce such order then in addition to the other costs taxed in the case, the Railway shall pay such sum as attorney's fee as the services are worth for the attorney for the State. The State is to be saved harmless from all costs in enforcing the reasonable orders of the Commissioners. This is a part of the laws under which the plaintiff in error uses and operates its railway. The fact that it brings the case to this Court, securing delay in enforcing the judgment, which is to its pecuniary benefit, should neither release it from the consequences of its disobedience, nor compel the State to be at expense on account thereof.

MILTON REMLEY,
Attorney General for Iowa.

Supreme Court U.S.
DEC 13 1895
JAMES H. MCKENNEY,
CLERK

REPLY OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 128.

THE IOWA CENTRAL RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF IOWA.

ANTHONY C. DALY, for Plaintiff in Error.

MILTON REMLEY, Atty. Genl., for Defendant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 128.

THE IOWA CENTRAL RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF IOWA.

REPLY
OF PLAINTIFF IN ERROR.

ANTHONY C. DALY, for Plaintiff in Error.

MILTON REMLEY, Atty. Genl., for Defendant.

Plaintiff in error served its argument on defendant eleventh September, defendant serves its argument ninth December, and this reply is made immediately upon the receipt of defendant's argument.

Defendant urges that the case in Supreme Court of Iowa was not original, that it was merely supplemental, but an examination of the record will show it is in error.

It may be necessary to say preliminarily that under the Iowa practice all parties defendant are brought into court upon

a notice in which the claim or cause shall be stated in a general way. This notice is followed by a petition setting forth the cause of action and a copy of such petition is filed for the use of defendant. Such a notice was served on plaintiff in error and it was accompanied by a paper entitled *Petition*, (Printed Transcript page 2), and such petition is headed thus: The State of Iowa, *Plaintiff* vs. The Iowa Central Railway Company, *Defendant*. This petition commences in the usual way, viz.: The plaintiff alleges, etc. The Iowa Central Railway Company is therein designated as *defendant*. After setting out the cause of action it concludes with the prayer usual in mandamus (Printed Transcript page 2). The Code of Iowa provides, Sec. 2646, the petition must contain: 2. The names of the parties to the action, plaintiffs and defendants, followed by the word "petition," if the proceedings are ordinary, and by the words "petition in equity," if the proceedings are equitable. The petition here was headed "Petition" without more. Upon the filing of our answer the opposition filed a paper entitled Motion to Strike and afterwards another, entitled Motion for More Specific Statement (Printed Transcript page 6). The first motion begins thus: Comes now the *plaintiff* and moves to strike from *defendant's* answer all *allegations* and *statements*. The next motion commences: Comes now the *plaintiff* and moves the court to require the *defendant* to make a more specific statement in its answer (Printed Transcript page 6). Section 2719 of Code of Iowa provides that the court may on motion of any person aggrieved thereby cause irrelevant or redundant matter to be stricken from any pleadings, and section 2720 provides that when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court, may on motion, require it to be made more definite and certain.

Here are all the ear marks of an original action and that, an action at law.

If this were an equitable proceeding the petition would have been entitled as required by the Code viz.—Petition in Equity—If it were not an original action, if it were part and parcel of some other proceeding that had gone before, if it were supplemental, if it were an order asked in some other cause pending, or that had been pending theretofore, the papers would have been entitled as of such other cause or proceeding.

It must be apparent from the record here that this is an original action brought in the supreme court of the state by the State of Iowa as plaintiff against the Iowa Central Railway Company as defendant. It is plain from the papers that the then attorney general recognized it as such. It was never disputed till now that this is an original action at law. Upon the preliminary matters in the supreme court of Iowa as shown by brief of plaintiff in error, page 7, we urged it was an original action for mandamus and endeavored to persuade the court to send the attorney general with his case to a court having the trial machinery,

jury, and the like. No objection was made by the attorney general or the court that it was not such original action for mandamus. When the attorney general filed his paper entitled Motion for Order, plaintiff in error filed its objection and resistance (see printed transcript of record, page 10), urged upon the court, in the fifth paragraph thereof, that it was "an original proceeding for mandatory writ" (see seventh line from bottom, page 10, printed transcript of record) and not a word came from opposition in refutation.

When the court passed upon the motion in writing (see printed transcript of record, pages 14-17) it was not disputed that the action was an original action in that court. Following close upon the sustaining of such motion for order the plaintiff in error moved for a rehearing in accordance with the Iowa practice (see printed transcript of record, pages 20, 21), again stated it was an original proceeding for a mandamus (see 24th line of said page 21) and yet there was no denial.

Our position that this was an original action in the supreme court of Iowa was thoroughly understood from the beginning, and was admitted by that court and by the then attorney general. It has never been assailed, disputed or denied until now, three days prior to the submission of the cause to this court on error.

It has somewhere been taught that if you have no possible defense to the merits, you should file a plea to the jurisdiction, and I fear my learned brother, the present attorney general, is acting in pursuance of such teaching.

This original action had no possible connection with any other cause save this that in some other proceeding a decree was entered against certain parties and which the opposition claims is binding upon plaintiff in error because at a sale ordered by the United States circuit court in a foreclosure of mortgage, it became the purchaser.

The State of Iowa did not attempt to bring the Iowa Central Railway Company into that old case. If this new action at law were supplemental to that old suit in equity, the record does not show it. If it were the intention of the attorney general to make this a part of that proceeding he might easily have indicated it. He did not do so. He did not intend to do so.

This *old* decree was entered in supreme court against the Central Iowa Railway Company in October, 1887, at a time when such company was substantially defunct, it had gone out of busines, the United States circuit court had taken possession of the railway and the same was sold at public auction pursuant to decree of such court in satisfaction of a mortgage. The Iowa Central Railway Company, plaintiff in error, was subsequently incorporated and took possession of the railway. The State did nothing for two years, made no request of the receiver in possession, or of the court appointing him, and then after the expiration of so long a period of time commenced this proceeding.

Our stand taken at the very outset and which has been ever since constantly maintained, was admitted. Therefore the immateriality of the reference of defendant in error to the statute of Iowa relating to the board of railway commissioners and the proceedings in the courts on an order of said board. We raise no question about any such statute and it is not in this case in any way.

In the short time allowed us between the time of service of argument of defendant in error and the time of submission of the cause we can do no more than add that this is a case where the court below rode over the plaintiff in error rough shod without the semblance of due form. If we were defeated below in a trial had in the regular course of procedure we would not be here complaining of it—we would have no right to bring our grievance here. But when every method known to the law for the trial of cases is thrust aside, and then we are defeated, we come to this court as of right. There is no other or speedier road to judgment for the State than there is for the individual. The State as well as the individual must travel the regular way.

The course of procedure must be uniform and consistent, else the courts must become the abiding place of the privileged. As this court has said so many times there must be a trial according to some settled course of judicial proceedings.

In commenting upon the clause and section of the fourteenth article of amendment to the constitution this court says in Scott v. McNeal, 154 U. S., 34: "These prohibitions extend to all acts of the state, whether through its legislature, its executive, or its judicial authorities." This raises the question for this court. Here is a deprivation without due process of law; a denial of the equal protection of the laws. The re-examination of the judgment of the state court is proper here.

The plaintiff in error admits that when the parties *have been fully heard* IN THE REGULAR COURSE OF JUDICIAL PROCEEDINGS then an erroneous decision of a state court is not a deprivation of the unsuccessful party's property without due process, but that is not the case here presented. Here, the regular course of judicial proceedings was disregarded.

It will not avail the defendant in error to assert that the motion was the equivalent of a demurrer. The law and the practice in due course makes provision for a demurrer but it no way recognizes the motion. If the answer had been attacked by demurrer, then, upon the demurrer being sustained, the party answering had the right to amend its answer so that it might not be vulnerable to demurrer, and if this could not be done such party must go out of court. That is the due form of which no complaint could be made. Such course was not pursued. Instead of demurring, the "motion for order" is filed. The supreme court of Iowa at its last October (1895) term, in Pen-

dleton v. Laub, reported in 64 Northwestern Reporter, 654, first column, disapproved of such *new* methods. There the plaintiff filed a paper entitled "motion for a restraining order," and asked for such order. The defendant objected to it because it was a proceeding unknown to the law of this state. The order was entered and defendant appealed. In reversing it the supreme court says: "This order was made without a trial or hearing or the introduction of any evidence." So in the case at bar if such motion were proper, then it ought not to have been allowed without a hearing of some kind. It ought not to have been taken as and for a demurrer, thus summarily disposing of the case.

In the objection and resistance which plaintiff in error filed to such motion, (printed transcript of record, page 10,11,) it was urged upon the court there should be a hearing and a time for hearing, a trial and a trial in due and proper form. The attention of the court was called to the provisions of the second paragraph, first section of the fourteenth amendment to the constitution of the United States and that the sustaining of such order would be violative of each part thereof.

If the court will examine our brief and argument heretofore filed herein in connection with this reply, it will have our position fully before it.

IOWA CENTRAL RAILWAY COMPANY.
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